

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

KERMIT GABEL,

Plaintiff,

vs.

STUART HUDSON, et al.,

Defendants.

Civil Action 2:14-cv-1057
Judge Watson
Magistrate Judge King

REPORT AND RECOMMENDATION

Plaintiff, formerly a state inmate¹ proceeding without the assistance of counsel, brings this civil rights action under 42 U.S.C. § 1983, claiming that he was denied medical and dental care in violation of his rights under the Eighth and Fourteenth Amendments to the United States Constitution while incarcerated at the Marion Correctional Institution ("MCI"). The Court granted plaintiff leave to proceed *in forma pauperis* on August 18, 2014. Order, ECF 5.

On January 15, 2015, the Court granted defendants' motion to revoke plaintiff's *in forma pauperis* status and assessed the full filing fee. Order, ECF 24, p. 2. See also Report and Recommendation, ECF 16 (recommending that defendants' motion to vacate order granting plaintiff's motion for leave to proceed *in forma pauperis*). Although \$350.00 had been paid toward the full filing fee, the Court ordered plaintiff to pay the remaining \$50.00 administrative fee no later than March 2, 2015. Order, ECF 24, p. 2. Plaintiff was specifically

¹ Plaintiff was apparently released from state custody in January 2015. ECF 25, 26.

advised that his failure to do so could result in the dismissal of the action for want of prosecution. *Id.* at 2-3.

The docket reflects that the copy of this *Order* addressed to plaintiff at MCI was returned as undeliverable with the notation "Released." ECF 25. Plaintiff thereafter provided a new address to the Court, ECF 26, and the Court directed the Clerk to mail a copy of the *Order*, ECF 24, to that new address. *Order*, ECF 27. The docket does not reflect that this mailing has been returned.² The remaining \$50.00 of the filing fee has not been paid.

An action can be dismissed for want of prosecution for failure to pay the filing fee. *See, e.g., Lamie v. Smith*, No. 13-1345, 2014 U.S. App. LEXIS 19151 (6th Cir. Feb. 4, 2014) (dismissing the action for want of prosecution when, after prior warning to the plaintiff, the proper fee was not paid by the deadline); *Conner v. United States*, No. 11-5271, 2011 U.S. App. LEXIS 26542 (6th Cir. June 15, 2011) (same).

It is therefore **RECOMMENDED** that this action be dismissed for want of prosecution.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within fourteen (14) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy

² Plaintiff has since filed another change of address. ECF 28.

thereof. Fed. R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Fed'n of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

March 12, 2015

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge